

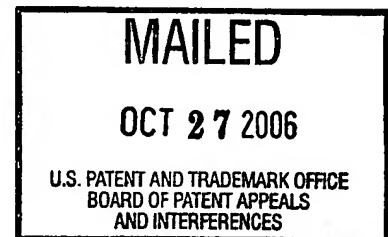
The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte GREGORY KINTZELE and LISEN KINTZELE

Appeal No. 2006-2182
Application No. 10/670,623
Technology Center 3600



ON BRIEF

Before FRANKFORT, OWENS and HORNER, *Administrative Patent Judges*.
HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the examiner's final rejection of claims 1-10, 12-16, and 20, all of the claims pending in the application. Claims 11 and 17-19 have been canceled.

We reverse.

BACKGROUND

The appellants' invention relates to an article suspension device for infants. Claims 1 and 12 are representative of the subject matter on appeal, and a copy of these claims can be found in the appendix to the appellants' brief.

The examiner relies upon the following as evidence of unpatentability:

Anderson	2,819,923	Jan. 14, 1958
Gabriel	4,095,316	Jun. 20, 1978
Dalmaso	4,253,544	Mar. 03, 1981
Giacona, III (Giacona)	6,029,870	Feb. 29, 2000

The following rejections are before us for review.

1. Claims 1, 2, 5-7, 10, 12, 13, 15, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Dalmaso.
2. Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Dalmaso and further in view of Gabriel.
3. Claims 3, 8, 9, 14, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Anderson in view of Dalmaso and further in view of Giacona.

Rather than reiterate in detail the conflicting viewpoints advanced by the examiner and the appellants regarding this appeal, we make reference to the examiner's answer (mailed February 15, 2006) for the examiner's complete reasoning in support of the rejections and to the appellants' brief (filed November 7, 2005) and reply brief (filed April 20, 2006) for the appellants' arguments.

OPINION

In reaching our decision in this appeal, we have carefully considered the appellants' specification and claims, the applied prior art, and the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations that follow.

Rejection of Claims 1, 2, 5-7, 10, 12, 13, 15, and 20

In the rejection of independent claims 1 and 12, the examiner determined that Anderson discloses all of the elements of these claims except for the limitation of the cord being elastic (claim 12) and the limitation of a cover extending between the first end and the second end of the cord (claims 1 and 12). Answer, pp. 3-4. The examiner found that it would have been obvious to one having ordinary skill in the art at the time of the invention, in view of Anderson's teaching of making a cord of flexible material such as steel wire cable, to have modified the cord to make it of an elastic material "for the purpose of providing an alternative, flexible, mechanically equivalent material for the cord based on the materials [sic] suitability for the intended use and since such a modification would not have produced any unexpected results." Answer, pp. 3-4. The examiner relied on Dalmaso for the teaching of a cover and found that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the sling of Anderson to add a cover over the cord "for the purpose of providing a means for providing shock absorption to the device to dissipate the shock forces generated by the rapidly decelerating object." Answer, p. 4.

We agree with the appellants that the examiner has failed to make a prima facie showing of a motivation, teaching, or suggestion to modify the Anderson sling

to make the cord of an elastic or stretchable material. We further agree with the appellants that the examiner has failed to make a prima facie showing of a motivation, teaching, or suggestion to modify the cord of Anderson to add a cover as shown in Dalmaso.¹

To make a prima facie showing of obviousness, the examiner must articulate a “teaching, suggestion, or motivation” to modify or combine the prior art teachings. As recently described in *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1337 (Fed. Cir. 2006),

[T]he “motivation-suggestion-teaching” test asks not merely what the references disclose, but whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor, would have been led to make the combination recited in the claims. From this it may be determined whether the overall disclosures, teachings, and suggestions of the prior art, and the level of skill in the art – i.e., the understandings and knowledge of persons having ordinary skill in the art at the time of the invention – support the legal conclusion of obviousness. (internal citations omitted).

In this case, the examiner’s reasoning that one of ordinary skill in the art at the time the invention was made would have been motivated to modify the steel wire of Anderson to make it of an elastic material so as to provide an alternative, flexible, mechanically equivalent material for the cord based on the material’s suitability for the intended use does not make sense in view of the purpose and

¹ The appellants further argue that Anderson is non-analogous art. We find no need to reach a decision on this issue in view of our holding of a lack of a teaching, suggestion, or motivation to

intended use of the Anderson sling. We find persuasive the appellants' argument on page 9 of the Brief that there is no motivation from Anderson's description of the cord as "flexible" that would have led a person of ordinary skill in the art to have modified the cord to make it of an elastic material. The purpose of the suspension sling of Anderson is to hang deer or other game from a tree to facilitate cleaning and dressing. Anderson, col. 1, lines 15-18. Substitution of an elastic cord would allow the game to move up and down as the user processes the game and would make it more difficult to safely dress the game. As such, an elastic cord would not be an equivalent material to the steel wire, nor would it be suitable for the intended use of the Anderson sling. Rather, we find a distinct disadvantage to substituting an elastic cord for the steel wire disclosed in Anderson, such that there would have been no motivation for one of ordinary skill in the art to have made such a modification.

Similarly, the examiner's reasoning that one of ordinary skill in the art at the time the invention was made would have modified the suspension sling of Anderson to add a cover as taught in Dalmaso for the purpose of providing shock absorption to the device misinterprets the teaching of Dalmaso. The examiner found that the jacket (18) of Dalmaso provided shock absorption to the device to dissipate the shock forces generated by a rapidly decelerating object. (Answer, p. 4) We disagree and find that the jacket (18) of Dalmaso does not provide shock absorption for the lanyard. Specifically, Dalmaso teaches that the core (14), made from a synthetic semi-drawn high tensile load bearing or bulked continuous filament material, having predetermined tensile yield strength, provides the shock

combine the teachings of Anderson and Dalmaso.

absorption. Dalmaso, col. 3, lines 1-13. The purpose of the jacket (18) of Dalmaso is to allow for the flag to be freed once the core (14) has elongated a predetermined amount. Dalmaso, col. 3, lines 27-33.

The examiner has offered no further articulation of a teaching, suggestion, or motivation in the prior art itself, the nature of the problem solved by the claimed invention, or the knowledge of one of ordinary skill in the art that would have led one of ordinary skill in the art to add a cover to the cord of Anderson. Finding no such teaching, suggestion, or motivation, we do not sustain the examiner's rejection of claims 1, 2, 5-7, 10, 12, 13, 15, and 20.

Rejection of claims 3, 4, 8, 9, 14, and 16

The examiner's rejections of claims 3, 4, 8, 9, 14, and 16 rely on the underlying combination of Anderson and Dalmaso in view of Gabriel or Giacona. The teachings of Gabriel and Giacona fail to cure the deficiencies of Anderson and Dalmaso. Specifically, neither reference provides a teaching, suggestion, or motivation to modify the cord of the Anderson sling to make it of an elastic material or to add a cover over the cord as claimed. For the same reasons provided above, we do not sustain the examiner's rejection of these claims.

To summarize, the decision of the examiner to reject claims 1-10, 12-16, and 20 is reversed.

CHARLES E. FRANKFORT
Administrative Patent Judge

Terry J. Owens
TERRY J. OWENS
Administrative Patent Judge

Linda E. Horner
LINDA E. HORNER
Administrative Patent Judge

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JOHN E. REILLY
1554 EMERSON STREET
DENVER, CO 80218

LEH/lg